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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

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THE PEOPLE,

Plaintiff and Respondent,

v.

TIMOTHY MONTHEI,

Defendant and Appellant.

C076658

(Super. Ct. No. 13F03726)

Defendant Timothy Monthei appeals the judgment entered following his no contest pleas to charges of child endangerment (Pen. Code, § 273a, subd. (b)) and charges related to drug trafficking (Health & Saf. Code, §§ 11366, 11378). On appeal, defendant contends the trial court erred in declining to quash a search warrant issued in 2012. He further contends that this court must independently review the in camera proceedings and the sealed portion of the affidavit submitted in support of a search warrant issued in 2013 to determine whether the trial court erred by denying his motion to traverse and quash that warrant. Finding no error, we affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

In June 2012 a magistrate signed a warrant authorizing the search of defendant and Lisa Straw's apartment at 5849 Sunrise Vista Drive in Citrus Heights, California. The affidavit in support of the warrant contained information provided by a confidential informant.

During the search of defendant's residence, police officers found 46.77 grams of methamphetamine in a shirt pocket, a glass pipe, a police scanner, a digital scale, packaging material, five separate bindles of cash totaling \$4,590, and a pay-owe sheet. Officers also found \$2,668 in cash on defendant's person. In addition, a search of Straw's car revealed 129 grams of methamphetamine in numerous baggies, 1.3 grams of heroin, 0.86 grams of cocaine, 32.6 grams of marijuana, a glass pipe, packaging material, oxycodone hydrochloride pills, Oxcontin pills, and other unidentified pills. At the time of the search, defendant's six-year-old child lived at the apartment.

In June 2013 a magistrate signed a warrant authorizing the search of defendant and Straw's home at 4317 Wendover Court in Fair Oaks, California. The warrant also authorized a search of defendant and Straw as well as their vehicles. The magistrate ordered part of the search warrant affidavit sealed to protect the identity of a confidential informant.

During the search of defendant's residence, police officers found methamphetamine, two digital scales, three glass pipes, and approximately \$570 in cash. A total of 108.3 grams of methamphetamine was found inside Straw's purse in plastic baggies, and approximately 16.4 grams of methamphetamine was found in a dresser used by defendant. At the time of the search, defendant's eight-year-old child was at the residence.

In April 2014 an amended consolidated information was filed, charging defendant with two counts of possessing methamphetamine for sale (Health & Saf. Code, § 11378), two counts of misdemeanor child endangerment (Pen. Code, § 273a, subd. (b)), and one

count of maintaining a place for the sale of methamphetamine (Health & Saf. Code, § 11366). It was also alleged that defendant possessed an amount of methamphetamine in excess of the amount provided in Penal Code section 1203.073, subdivision (b)(2), defendant had a prior conviction for possession of a controlled substance for sale within the meaning of Health and Safety Code section 11370.2, subdivision (c), and defendant was out on bail when he possessed methamphetamine for sale within the meaning of Penal Code section 12022.1.

Following the trial court's denial of motions to traverse and quash the search warrants defendant pleaded no contest to the charges alleged in the consolidated information and admitted the special allegations. The trial court sentenced defendant to five years eight months in state prison.

Defendant filed a timely notice of appeal.

## **DISCUSSION**

### **A. 2012 Search Warrant**

Defendant contends the trial court erred by failing to quash the 2012 search warrant because the affidavit in support of the warrant did not set forth sufficient facts establishing probable cause. According to defendant, the affidavit failed to provide a factual basis for the magistrate to conclude that the confidential informant was reliable or had personal knowledge of what he/she reported. Defendant further argues that the police investigation failed to corroborate the information supplied by the informant, and that the affidavit only offered conclusions by the affiant. We disagree.

“The Fourth Amendment to the United States Constitution prohibits ‘unreasonable searches and seizures’ and requires search warrants to be issued only upon a showing of ‘probable cause’ describing with particularity ‘the place to be searched and the . . . things to be seized.’ ” (*People v. Lazarus* (2015) 238 Cal.App.4th 734, 763.) A defendant may move to suppress evidence obtained as the result of a search or seizure on the ground that

there was not probable cause for the issuance of the search warrant. (Pen. Code, § 1538.5, subd. (a)(1)(B)(iii).)

When a reviewing court is asked to determine whether probable cause supported the issuance of a warrant, “the court should proceed to determine whether, under the ‘totality of the circumstances’ presented in the search warrant affidavit . . . , there was ‘a fair probability’ that contraband or evidence of a crime would be found in the place searched pursuant to the warrant. [Citations.]” (*People v. Hobbs* (1994) 7 Cal.4th 948, 975 (*Hobbs*).) “[D]oubtful or marginal cases are to be resolved with a preference for upholding a search under a warrant. [Citation.]” (*People v. Mikesell* (1996) 46 Cal.App.4th 1711, 1719; see *People v. Richardson* (2008) 43 Cal.4th 959, 989.)

“In reviewing the magistrate’s determination to issue the warrant, it is settled that ‘the warrant can be upset only if the affidavit fails as a matter of law . . . to set forth sufficient competent evidence supportive of the magistrate[’s] finding of probable cause, since it is the function of the trier of fact, not the reviewing court, to appraise and weigh evidence when presented by affidavit . . . .’ ” (*Hobbs, supra*, 7 Cal.4th at p. 975.) Thus, “[t]he magistrate’s determination of probable cause is entitled to deferential review. [Citations.]” (*People v. Kraft* (2000) 23 Cal.4th 978, 1041.) However, appellate courts independently determine whether, on the facts as found by the magistrate, the search was reasonable under the Fourth Amendment. (*People v. Hunter* (2005) 133 Cal.App.4th 371, 377; *People v. Glaser* (1995) 11 Cal.4th 354, 362.)

“Because unverified information from an untested or unreliable informant is ordinarily unreliable, it does not establish probable cause unless it is ‘corroborated in essential respects by other facts, sources or circumstances.’ [Citations.] For corroboration to be adequate, it must pertain to the alleged criminal activity; accuracy of information regarding the suspect generally is insufficient. [Citation.] Courts take a dim view of the significance of ‘pedestrian facts’ such as a suspect’s physical description, his residence and his vehicles. [Citation.] However, the corroboration is sufficient if police

investigation has uncovered probative indications of criminal activity along the lines suggested by the informant. [Citation.] Even observations of seemingly innocent activity provide sufficient corroboration if the anonymous tip casts the activity in a suspicious light. [Citations.]” (*People v. Johnson* (1990) 220 Cal.App.3d 742, 749, disapproved on another ground in *People v. Camarella* (1991) 54 Cal.3d 592, 606, fn. 6 (*Camarella*).)

“Corroboration is not limited to a given form but includes within its ambit any facts, sources, and circumstances which reasonably tend to offer independent support for information claimed to be true. In a police investigation the information given by informants, even where the informant’s reliability is not complete, can nevertheless be sufficient to establish the requisite probable cause if it is corroborated in essential respects by other facts, sources or circumstances. [Citation.] Not only may the information in a search warrant affidavit which has been supplied by an informant be corroborated by investigation conducted by law enforcement officials [citation], but also this corroboration need only give the officers reasonable grounds to believe that the informant is truthful [citation].” (*People v. Levine* (1984) 152 Cal.App.3d 1058, 1065.)

“The purpose served by corroboration is ‘to establish that the information provided by the informant did not constitute a made-up story, one fabricated out of whole cloth. Corroboration of part of the information provided by the informant [gives] credibility to the remainder of the information.’ [Citation.] It is sufficient that an informant’s statements are corroborated in a number of key respects, and a piecemeal approach is not required.” (*People v. Rothen* (1988) 203 Cal.App.3d 684, 689.)

As relevant here, the affidavit in support of the 2012 search warrant states as follows:

“On 06/26/2012, your affiant was assigned to the Western El Dorado County Narcotic Enforcement Team (WENET). Your affiant was contacted by a subject who is a Confidential Informant (C/I) for the WENET unit.

“The subject requests his/her identity remain confidential, because in my training and experience the disclosure of the informant’s identity will jeopardize his/her life and safety and will destroy the informant’s usefulness to Law Enforcement. The subject hereafter will be referred to as C/I.

“On the above mentioned date, your affiant received information from the above mentioned C/I who advised me that he/she knows a subject by the name Serena Lynn Cantway. Further, the C/I stated that he/she knows Serena Lynn Cantway, travels to Sacramento for the purchase of methamphetamine and that Serena Lynn Cantway has been and is selling methamphetamine throughout El Dorado County. Further the C/I stated that Serena Lynn Cantway would be traveling to Sacramento today (06/26/2012) for the purchase of methamphetamine.

“Your affiant knows that Serena Lynn Cantway drives a 1994 Jeep Cherokee California license plate #: 3HSF681; registered to a John Steward. Further, your affiant knows that Serena Lynn Cantway has recently had the Jeep Cherokee paint[ed] from white to black.

“A check [of] the search engine WebKPF, which is utilized by the El Dorado County Sheriff’s Office [to] gather information on investigations, revealed informal searchable probation out of Sacramento County till 06/06/2015 for Serena Lynn Cantway.

“Detective St. Pierre and your affiant have received information over the past couple of months in regards to Serena Lynn Cantway traveling to Sacramento, California and picking up methamphetamine. Additionally, the information provided to your affiant stated that Serena Lynn Cantway has a methamphetamine supplier residing off of Sunrise Blvd, Sacramento, California.

“On the above mentioned date, Detective St. Pierre, Detective Palmberg, Sgt. Cook and your affiant set up in the area of Camino, California in an attempt [to] locate Serena Lynn Cantway driving the above mentioned black Jeep Cherokee.

“At approximately 2015 hrs, Detective St. Pierre located the black Jeep Cherokee California license plate #: 3HSF681 with Serena Lynn Cantway driving west bound Highway 50 near Smith Flat Road, Placerville, California. Additionally, Detective St. Pierre observed a female passenger who he believed to be Cindyee Sirman as the passenger of the vehicle.

“Detective St. Pierre and your affiant, along with Detective Palmberg and Sgt. Cook followed the Jeep Cherokee with Serena Lynn Cantway driving, make various stops in El Dorado County and then travel to Sacramento. Your affiant along with WENET Detectives observed the vehicle with Serena Lynn Cantway arrive at 5849 Sunrise Vista Drive, Citrus Heights, Ca 95610 (Sunrise Center Apartments).

“Your affiant along with WENET Detectives set-up in the area to observe the specific apartment that Serena Lynn Cantway entered. Detective Palmberg observed Serena Lynn Cantway exit an apartment number #29 at Sunrise Center Apartments (later identified again on 06/27/2012 by Detective Palmberg retrieving a legal description).

“Your affiant along with WENET detectives observed Serena Lynn Cantway drive her vehicle back to El Dorado County, making one stop at McDonald’s Restaurant (drive through) on Hazel Blvd, Rancho Cordova, Ca 95670.

“Your affiant along with WENET detectives followed Serena Lynn Cantway driving the black Jeep Cherokee, east bound Highway 50 back into El Dorado County.

“At approximately 2230 hrs, Patrol Sgt. Applegate conducted a traffic stop on the black Jeep Cherokee driven by Serena Lynn Cantway on Cameron Park Drive, Cameron Park, Ca. 95682. An investigation from the traffic stop resulted in 11.0 grams of methamphetamine on the person of Serena Lynn Cantway. Serena Lynn Cantway was arrested for various charges to include transportation of methamphetamine, possession for sale of methamphetamine (located scale with white residue that tested presumptive positive for methamphetamine and packaging), possession of methamphetamine and

possession of illegal substances in a jail facility and was booked into the El Dorado County Jail.

“Your affiant observed Serena Lynn Cantway travel to Citrus Heights, to an apartment at 5849 Sunrise Vista Drive #29, Citrus Heights, Ca 95610. Upon leaving the aforementioned apartment, Serena Lynn Cantway did not stop at any residences with the exception of the McDonald’s Restaurant located on Hazel and Highway 50 in Rancho Cordova (drive through). Additionally, Serena Lynn Cantway was in possession of 11 grams of methamphetamine that your affiant believes she purchased at the location of 5849 Sunrise Vista Drive #29, Citrus Heights, Ca 95610. Further, your affiant believes that this location is the source and supply of methamphetamine for Serena Lynn Cantway.”

We conclude the affidavit contains sufficient facts to support the magistrate’s determination to issue a warrant. Under the totality of the circumstances presented in the affidavit, there was a fair probability that contraband or evidence of a crime would be found at defendant’s residence. The information supplied by the confidential informant was sufficiently corroborated by independent police work to establish the informant’s reliability. The informant told the police that he/she personally knew an individual named Serena Lynn Cantway, and that he/she knew Cantway travels to Sacramento to purchase methamphetamine that she sells throughout El Dorado County. The informant also told the police that Cantway would be traveling to Sacramento on June 26, 2012, to purchase methamphetamine from her supplier. On that day, police officers—who were aware from other sources that Cantway had a methamphetamine supplier residing off Sunrise Boulevard in Sacramento—followed Cantway to an apartment complex located off Sunrise Boulevard at 5849 Sunrise Vista Drive in Citrus Heights, California.<sup>1</sup> At the

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<sup>1</sup> In arguing that the police investigation failed to corroborate any facts supplied by the informant, defendant notes that Cantway never went to Sacramento. We are not



apartment complex, an officer observed defendant exit apartment number 29. The officers then followed Cantway back to El Dorado County where a traffic stop was conducted and a subsequent investigation revealed that Cantway possessed 11 grams of methamphetamine. Based on these facts, the magistrate did not err in determining that there was probable cause to support the issuance of a search warrant.

But even if the search warrant was not supported by probable cause, we conclude that the good faith exception to the exclusionary rule set forth in *United States v. Leon* (1984) 468 U.S. 897 [82 L.Ed.2d 677], would apply. (See *id.* at p. 900 [holding that exclusionary rule should not be applied when evidence was “obtained by officers acting in reasonable reliance on a search warrant issued by a detached and neutral magistrate but ultimately found to be unsupported by probable cause”].) Where probable cause is lacking, the good faith exception requires a court to determine whether “a reasonable and well-trained officer ‘would have *known* that his affidavit failed to establish probable cause and that he should not have applied for the warrant.’ [Citation.] But if such an officer would not reasonably have known that the affidavit (and any other supporting evidence) failed to establish probable cause, there is no reason to apply the exclusionary rule, because there has been no objectively unreasonable police conduct requiring deterrence. [Citation.]” (*Camarella, supra*, 54 Cal.3d at p. 606.) Here, in addition to corroborating the information supplied by the confidential informant, the affiant had the affidavit reviewed by a deputy district attorney, who agreed that probable cause existed. Under the circumstances of this case, it cannot be said that a reasonably well-trained officer would have known that the affidavit failed to establish probable cause such that he should not have applied for the warrant. (See *id.* at pp. 606-607 [corroborating some

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persuaded by this argument as Citrus Heights is part of the overall Sacramento metropolitan area.

facts and having affidavit approved by deputy district attorney showed officer acted in good faith in seeking warrant].)

## **B. 2013 Search Warrant**

Before pleading no contest to the charges in the amended consolidated information and admitting the special allegations, defendant brought a motion under *Hobbs* to have the trial court conduct an in camera review of the sealed portion of the search warrant affidavit to determine whether the sealing was proper and to traverse and quash the search warrant issued in 2013. In denying the motion, the trial court made the following determinations: (1) the affidavit was properly sealed; (2) the sealed and unsealed portions of the affidavit did not show any indication of inconsistencies, material misrepresentations, or falsities; and (3) the affidavit was sufficient to support a finding that probable cause existed to issue the search warrant. On appeal, defendant asks this court to independently review the in camera proceedings and the sealed portion of the affidavit to determine whether the trial court erred by denying his motion to traverse and quash the warrant.

Under *Hobbs*, “[o]n a properly noticed motion by the defense seeking to quash or traverse [a] search warrant” where any portion or all of the search warrant affidavit has been sealed, “the lower court should conduct an in camera hearing . . . . It must first be determined whether sufficient grounds exist for maintaining the confidentiality of the informant’s identity. It should then be determined whether the entirety of the affidavit or any major portion thereof is properly sealed, i.e., whether the extent of the sealing is necessary to avoid revealing the informant’s identity.” (*Hobbs, supra*, 7 Cal.4th at p. 972, fn. omitted.)

“If the affidavit is found to have been properly sealed, and the defendant has moved to traverse the warrant, the court should then proceed to determine whether the defendant’s general allegations of material misrepresentations or omissions are supported by the public and sealed portions of the search warrant affidavit . . . . Generally, in order

to prevail on such a challenge, the defendant must demonstrate that (1) the affidavit included a false statement made ‘knowingly and intentionally, or with reckless disregard for the truth,’ and (2) ‘the allegedly false statement is necessary to the finding of probable cause.’ ” (*Hobbs, supra*, 7 Cal.4th at p. 974.)

“If the trial court determines that the materials . . . before it do not support defendant’s charges of material misrepresentation, the court should simply report this conclusion to the defendant and enter an order denying the motion to traverse. [Citations.]” (*Hobbs, supra*, 7 Cal.4th at p. 974.)

“[I]f the affidavit is found to have been properly sealed and the defendant has moved to quash the search warrant [citation], the court should proceed to determine whether, under the ‘totality of the circumstances’ presented in the search warrant affidavit . . . , there was ‘a fair probability’ that contraband or evidence of a crime would be found in the place searched pursuant to the warrant. [Citations.] In reviewing the magistrate’s determination to issue the warrant, it is settled that ‘the warrant can be upset only if the affidavit fails as a matter of law . . . to set forth sufficient competent evidence supportive of the magistrate’s finding of probable cause, since it is the function of the trier of fact, not the reviewing court, to appraise and weigh evidence when presented by affidavit as well as when presented by oral testimony. [Citations.]’ [Citation.]” (*Hobbs, supra*, 7 Cal.4th at p. 975.)

“If the court determines, based on its review of all the relevant materials, that the affidavit . . . furnished probable cause for issuance of the warrant [citation], the court should simply report this conclusion to the defendant and enter an order denying the motion to quash. [Citations.]” (*Hobbs, supra*, 7 Cal.4th at p. 975.) “In all instances, a sealed transcript of the in camera proceedings, and any other sealed or excised materials, should be retained in the record along with the public portions of the search warrant application for possible appellate review. [Citations.]” (*Ibid.*) On appeal, we review for abuse of discretion. (See *id.* at p. 976.)

Having reviewed the transcript of the in camera proceedings and the sealed and unsealed portions of the search warrant affidavit, we conclude that there was no abuse of discretion. The trial court correctly determined that the confidential portion of the affidavit was properly sealed. The trial court also correctly determined that there was nothing to suggest any material misrepresentations or omissions were made by the affiant in applying for the search warrant, and that the affidavit set forth sufficiently reliable and competent evidence to support the magistrate's finding of probable cause to issue the warrant.<sup>2</sup> Accordingly, the trial court properly denied defendant's motion.<sup>3</sup>

### **DISPOSITION**

The judgment is affirmed.

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RAYE, P. J.

We concur:

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BLEASE, J.

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NICHOLSON, J.

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<sup>2</sup> Even if we were to conclude that probable cause did not support the issuance of the warrant, the good faith exception would preclude application of the exclusionary rule. Based on the information in the affidavit, a reasonably well-trained officer would not have concluded that probable cause did not exist.

<sup>3</sup> In light of our conclusions above, we need not address defendant's argument regarding the sentencing enhancement imposed pursuant to Penal Code section 12022.1. Nor do we need to address defendant's arguments regarding fruit of the poisonous tree and ineffective assistance of counsel for failing to raise the tainted fruit argument.